

*Intellectual Property and Technology Related Causes*

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April 22, 2002

Mr. Joseph W. Hammell  
Dorsey & Whitney LLP  
Pillsbury Center South  
220 South Sixth Street  
Minneapolis, MN 55402-1498

Via Facsimile: (612) 340-2777

Re: **U.S. Patent Application for:  
Storage Technology Corporation  
Invention Disclosure No.: 2001-028-NSC  
Our File No.: STK 01028 PUS**

Dear Mr. Hammell:

I am writing in response to your letter of April 5, 2002 concerning the above-identified patent application.

The proposed agreement set forth in your letter is unacceptable. Your proposal fails to provide the clarification we requested. In my March 15, 2002 letter, we specifically informed you of the unacceptability of any condition that would require StorageTek to forego enforcement of any patent issuing from this application against Mr. Kuik or Cisco (*i.e.*, a covenant not to sue, or a paid-up license). Your proposal is conspicuously silent on this point, and therefore unclear.

Your proposal is also overly broad. The requirement that StorageTek "shall not use or attempt to use" certain information lacks any definition of those terms and is therefore overbroad, if not ambiguous. Moreover, prohibiting StorageTek from using "*any facts or evidence relating to*" Mr. Kuik's response is also unacceptably broad, preventing use even of information already known to StorageTek. It is also unclear, and you have never articulated a reason, why StorageTek should grant Cisco some type of immunity as a condition for Mr. Kuik's cooperation on a matter that arose during the time of Mr. Kuik's employment with StorageTek.

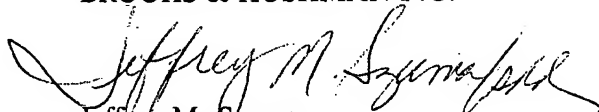
Finally, pursuant to an Employee Agreement Mr. Kuik-executed with Network Systems (now StorageTek), StorageTek is entitled to Mr. Kuik's unconditional cooperation on this matter. A copy of Mr. Kuik's Employee Agreement is attached. Under section two, entitled "INVENTIONS," Mr. Kuik has agreed that, for all inventions (defined in section one of that Agreement) made or conceived by him, as well as all patent applications and patents granted for such inventions, all of his rights therein are assigned to Network Systems. Mr. Kuik has further agreed to promptly deliver to Network Systems such written instruments as may be necessary to preserve, obtain, maintain and vest any patent rights. As a result, while a mere formality in view of his existing assignment, Mr. Kuik is obligated, for example, to execute and return the Assignment previously sent to him.

Joseph W. Hammell  
April 22, 2002  
Page 2

By now placing conditions on his promised cooperation, it is apparent that Mr. Kuik has no intention of cooperating, and that he is in breach of his Employee Agreement. In light of his refusal to cooperate, StorageTek will take those steps necessary to pursue the application in the absence of Mr. Kuik's cooperation.

Very truly yours,

BROOKS & KUSHMAN P.C.

  
Jeffrey M. Szuma



## EMPLOYEE AGREEMENT

I AM EMPLOYED OR DESIRE TO BE EMPLOYED BY NETWORK SYSTEMS CORPORATION IN A CAPACITY IN WHICH I MAY RECEIVE OR CONTRIBUTE TO CONFIDENTIAL INFORMATION. IN CONSIDERATION OF SUCH EMPLOYMENT OR CONTINUED EMPLOYMENT, THE WAGES OR SALARY AND OTHER EMPLOYEE BENEFITS IN COMPENSATION FOR MY SERVICES, THE POST-TERMINATION PAYMENTS DESCRIBED HEREIN, AND OF BEING GIVEN ACCESS TO CONFIDENTIAL INFORMATION, ALL OF WHICH CONSIDERATION I EXPRESSLY ACKNOWLEDGE IS VALUABLE TO ME, I AGREE THAT:

**1. DEFINITIONS**—In this Employee Agreement, the terms set forth in this paragraph 1 shall have the following meanings:

- a. "Company" or "Network Systems" means Network Systems Corporation and any existing or future subsidiaries, owned or controlled, directly or indirectly, by Network Systems Corporation.
- b. "Confidential Information" means information not generally known to others and which is proprietary information of the Company, including trade secrets of the Company and information relating to products or processes, research, development, manufacturing, purchasing, accounting, engineering, marketing, merchandising, selling, leasing, servicing, customers, finance, and business systems and techniques. All information disclosed to me or to which I obtain access, whether such information was originated by me or others, during the period of my employment which I have reasonable basis to believe to be Confidential Information, shall be presumed to be Confidential Information.
- c. "Invention" means discoveries, improvements, ideas (whether or not shown or described in writing or reduced to practice), and works of authorship, whether or not patentable or copyrightable,
  - (1) which relate directly to the Company's business, or
  - (2) which relate to the Company's actual or demonstrably anticipated research or development, or
  - (3) which result from any work performed by me for the Company, or
  - (4) for which equipment, facilities, trade secret information, or supplies of the Company are used, or
  - (5) which is developed on Company time.
- d. "Conflicting Product" means any product, method or process, system, or service of any person or organization other than the Company, in existence or under development, which is the same as, similar to, competes with, or has a usage allied to a product, method or process, system, or service upon which I shall have worked (in either a sales or a non-sales capacity) during the last three years of my employment with the Company or about which I acquired Confidential Information.
- e. "Conflicting Organization" means any person or organization that is engaged in or about to become engaged in research on or development, production, marketing, leasing, selling, or servicing of a Conflicting Product.

**2. INVENTIONS** — With respect to Inventions made, authored, or conceived by me either solely or jointly with others (1) during my employment whether or not during normal working hours or on the Company's premises or (2) within one year after termination of employment, I shall:

- a. keep accurate, complete, and timely records of such Inventions, which records shall be the Company's property and be retained on the Company's premises;
- b. promptly and fully disclose and describe such Inventions in writing to the Company;
- c. assign (and I do hereby assign) to the Company all of my rights to such Inventions and to applications for letters patent and/or copyrights in all countries and to letters patent and/or copyrights granted upon such Inventions in all countries; and
- d. acknowledge and deliver promptly to the Company (without charge to the Company but at the Company's expense) such written instruments and to do such other acts as may be necessary in the Company's opinion to preserve property rights against forfeiture, abandonment, or loss and to obtain and maintain letters patent and/or copyrights and to vest the entire right and title thereto in the Company.

### NOTICE AND ACKNOWLEDGEMENT

I understand that paragraph 2 of this Employee Agreement does not apply to an Invention for which no equipment, supplies, facilities, or trade secret information of the Company was used, which was developed entirely on my own time, and (1) does not relate (a) directly to the Company's business or (b) to the Company's actual or demonstrably anticipated research or development or (2) which does not result from any work performed by me for the Company.

**3. NON-DISCLOSURE**—Any Confidential Information received by me as a result of my employment with the Company shall be the property of the Company and shall be held in trust by me solely for the Company's benefit and, except as required by my duties to the Company, I shall never, either during my employment with the Company or at any time thereafter, use or disclose any Confidential Information.

**4. TERMINATION**—Upon termination of my employment with the Company, all records, articles, devices, equipment, and other items that disclose or embody Confidential Information including all copies or specimens thereof in my possession, whether prepared or made by me or others, shall be left with the Company.

5. **NON-COMPETE**—For a period of two years after termination of my employment with the Company (for any reason or by either party), I shall immediately inform the Company of any subsequent employment or association, inform such new employer or associate of this Agreement, providing the employer or associate with a copy thereof, and shall not, directly or indirectly, either as proprietor, partner, employee, or agent:

a. Sell or solicit orders for any Conflicting Products:

- (i) to or from any customer or client whom, within the three-year period immediately preceding termination of my employment with the Company, I solicited or serviced or in connection with whom I managed the solicitation or servicing thereof for the Company, or
- (ii) in any territory in which, within the three-year period immediately preceding termination of my employment with the Company, I was working or which I managed for the Company.

b. Direct, promote, or assist in the development, production, or servicing of any Conflicting Products.

c. Render services to any Conflicting Organization in the United States or in any country in which the Company has a plant for manufacturing a product on which I shall have worked during my employment with the Company or in which the Company provides a service in which I shall have participated during my employment with the Company, except that I may accept employment with a Conflicting Organization whose business is diversified and which has separate and distinct divisions, if:

- (1) my services are rendered to such a separate and distinct division which of itself is not a Conflicting Organization, and
- (2) provided, prior to my accepting such employment, the Company receives separate written assurances satisfactory to the Company from such Conflicting Organization and from me that I shall not directly or indirectly render services in connection with any Conflicting Products.

6. **COMPENSATION**—If, solely because of the provisions of paragraph 5, I am unable to obtain employment consistent with my ability and education within one month after termination of my employment with the Company, and so advise the Company in writing, such provisions shall thereafter continue to bind me only so long as the Company shall make monthly payments to me equal to the greater of either one-twelfth (1/12) of my annual compensation at the time of termination (excluding any other extra compensation, bonus, commission, employee benefits, or perquisites) or one twenty-fourth (1/24) of my average annual compensation for the three calendar years prior to termination (including base salary plus actual bonus or commissions paid, excluding any other extra compensation, employee benefits, or perquisites) for each month of such unemployment, commencing with the end of the second month after termination of my employment with the Company and ending as described below.

a. I agree that during each month of such unemployment I shall make conscientious and aggressive efforts to find employment and within ten days after the end of each calendar month I shall give the Company a detailed written account of my efforts to obtain employment. Such account shall include a statement by me that although I aggressively sought employment, I was unable to obtain employment that would not conflict with the provisions of paragraph 5 of this Agreement. It is understood that the Company shall, at its option, be relieved of making a monthly payment to me for any month during which I have failed to seek employment conscientiously and aggressively or account to the Company as provided for immediately above.

b. Upon my fulfillment of the conditions set forth in paragraph 6(a), the Company is obligated to make and to continue to make such monthly payments to me unless:

(1) thirty days before such monthly payment would otherwise be due, the Company gives me written permission to accept available employment, or the Company gives me a written release from the obligations of paragraph 5 of this Agreement,

(2) I die,

(3) except as modified by paragraph 6(e), I obtain employment that does not violate the provisions of paragraph 5 (and I agree that I shall give prompt written notice of such employment to the Company), or

(4) I have violated or subsequently violate the provisions of paragraphs 3 or 5 of this Employee Agreement.

c. Discontinuance of such monthly payments by the Company for any reason including the reasons set forth in paragraph 6(b)(4) shall not be considered to be a liquidation of any damages suffered by the Company, and the Company may avail itself of any remedies otherwise available through this Employee Agreement or applicable principles of law or equity for any breach or default by me of this Agreement.

d. The Company's liability under this Agreement or in any action relating thereto shall be limited to an amount not to exceed the equivalent of 23 such monthly payments less any amounts already paid to me by the Company pursuant to this Agreement; the Company is not obligated under this Agreement to me for the first month of such unemployment.

e. If, after termination of my employment with the Company, I obtain other employment but solely because of the provisions of paragraph 5, my position is such that my gross monthly income is actually less than the monthly payment that would be due while unemployed, then the Company's obligations to make payments to me for the period specified in this paragraph 6 shall be limited to the difference between (1) the monthly payment that would be due while unemployed as first described under this paragraph 6 and (2) any lesser gross monthly income I receive in my subsequent employment.

7. **BINDING EFFECT**—All my obligations under this Employee Agreement except for paragraphs 5 and 6 shall be binding upon my heirs, spouse, assigns, and legal representatives.
8. **SEVERABILITY**—If any provision of this Employee Agreement is determined to be void by any legislative, judicial, or administrative action as properly and judicially applied to this Employee Agreement, then this Employee Agreement shall be construed as if such provision is not contained herein insofar as such particular jurisdiction is concerned.
9. **PRIOR AGREEMENT**—This Employee Agreement replaces any existing agreement entered into by me and the Company for the same purpose relating generally to the same subject matter, but such replacement shall not affect either party's rights and obligations arising out of any such prior agreement not otherwise superseded by this Agreement, which remaining rights and obligations shall then continue to be in effect for that purpose.
10. **PRIOR INVENTIONS**—Except as listed immediately below, I shall not assert any rights under any inventions as having been made, conceived, authored, or acquired by me prior to my being employed by the Company. (Do not disclose or describe here anything you regard as being confidential. What is wanted in this space or on a separate attached sheet to be referenced below is a brief description of the invention, plus a list of source documents, such as patents, patent applications, drawings, or written descriptions, identified by number, title, and date.)

I UNDERSTAND AND EXPRESSLY ACKNOWLEDGE THAT IT LIKELY WILL BE VERY DIFFICULT FOR THE COMPANY TO ASCERTAIN OR MEASURE DAMAGES THAT THE COMPANY HAS SUFFERED OR MIGHT SUFFER FROM MY FAILURE TO FULFILL MY OBLIGATIONS UNDER THIS EMPLOYEE AGREEMENT. THEREFORE, I ACKNOWLEDGE THAT THE COMPANY SHALL BE ENTITLED TO INJUNCTIVE RELIEF (FOR EXAMPLE, BUT NOT LIMITED THERETO, PREVENTING ME FROM ACCEPTING EMPLOYMENT WITH A CONFLICTING ORGANIZATION) IF I BREACH OR AM IN DEFAULT UNDER THIS AGREEMENT.

Signed at Network Systems this 1 day of March, 1994  
by employee and on behalf of Network Systems.

Sammy Kib  
Employee's signature  
8710 Taylor Ct.  
Home Address: Street  
Blaine Mn. 55434  
City State ZIP Code  
476-86-9359  
Employee's Social Security Number  
#2801  
Employee Number  
71025  
Work Location ALL

Accepted for Network Systems Corporation  
by: William Peterson Manager  
its: William Peterson Manager